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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 150112035-5658-02]

RIN 0648-BE80

Fisheries off West Coast States; Highly Migratory Species Fishery Management Plan; Revision to Prohibited Species Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to revise the prohibited species policy for highly migratory species off the U.S. West Coast. This action is necessary to accurately reflect the intent of the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

DATES: The final rule is effective *[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) and other supporting documents are available via the Federal eRulemaking Portal: <http://www.regulations.gov>, docket NOAA-NMFS-2015-0006, or contact the Regional Administrator, William W.

Stelle, Jr., NMFS West Coast Region, 7600 Sand Point Way, NE, Bldg 1, Seattle, WA 98115-0070, or RegionalAdministrator.WCRHMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Taylor Debevec, NMFS, 562-980-4066.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2015, the National Marine Fisheries Service (NMFS) published a proposed rule in the **Federal Register** (80 FR 31884) to resolve a discrepancy between the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS)¹ and the regulations that implemented the FMP². This action was identified at the Pacific Fishery Management Council (Council) meeting in November 2014 and was discussed with broad support. The public comment period was open until July 19, 2015. No changes to the proposed rule were made in response to comments. This final rule is implemented under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801, *et seq.*, by regulations at 50 CFR part 660.

This final rule codifies two exceptions to the general prohibition on retention of prohibited species from the HMS FMP that were not included in the implementing regulations for the FMP. Species for which retention is, and will continue to be, prohibited are identified in the definition section, § 660.702, under “Prohibited species.” This revision to the definition of “prohibited species” makes the language at § 660.711(a) redundant and, therefore, it is deleted. Finally, the language at § 660.705(e) clearly states the prohibition of targeting these species while fishing for HMS, as well as explicitly

¹ <http://www.pcouncil.org/wp-content/uploads/HMS-FMP-Jul11.pdf>

² Title 50, part 660, subpart K

identifies all of the exceptions to the retention prohibition. These revisions make the regulations for prohibited species consistent with the policy and analysis of the HMS FMP.

The proposed rule contains additional background information, including information on the history of the HMS FMP, the discrepancy between it and the regulations, and the need to rectify this discrepancy.

Public Comments and Responses

NMFS received one written public comment. The commenter expressed several concerns regarding more than one aspect of the rule, some being very similar; therefore, NMFS is responding to the common themes/topics. The responses are summarized below. Specific issues that were beyond the scope of this rulemaking are not addressed here.

Issue 1: The current HMS regulations already convey the prohibited species policy of the HMS FMP.

Response: Three exceptions to the prohibited species policy were outlined in the FMP, but only one is in the regulations. Since two of the exceptions are missing, the regulations do not fully convey the intent of the FMP.

Issue 2: The proposed revisions to the regulations would delete important aspects of the policy and do not make sense within the existing flow and outline of the subpart.

Response: Although parts of the regulations (not the policy) are deleted, they are administrative in nature. The revisions remove nothing of substance, but rather reorganize the language for clarity and add the missing exceptions.

Issue 3: The exceptions proposed for addition to the regulations have not been analyzed and are not consistent with the management plan.

Response: These exceptions, which were written in the HMS FMP, were analyzed in the 2003 Environmental Impact Statement (EIS) for the FMP. The EIS found that the prohibited species policy, including the exceptions, would ensure that neither the rare sharks nor the strict management of halibut and salmon are compromised by HMS fisheries.

Issue 4: This action makes catching prohibited species legal.

Response: The edited regulations continue to generally prohibit the retention of prohibited species, but add two limited circumstances in which they are allowed to be retained, as set forth in the FMP.

Classification

The Administrator, West Coast Region, NMFS, determined that this regulatory amendment under the HMS FMP is necessary for the conservation and management of the fishery, and that it is consistent with the MSA and other applicable laws.

Administrative Procedure Act (APA)

The Assistant Administrator finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This action revises the definition of prohibited species and codifies two exceptions to the general prohibition on retention of prohibited species. This action would benefit regulated entities by ensuring clarity in the definition of prohibited species, and consistency of the exceptions to the general prohibition on retention of prohibited species with the policy outlined in the HMS FMP,

which allows for the retention of salmon and Pacific halibut, and basking, megamouth, and great white sharks under certain limited conditions.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not being repeated here. No comments were received regarding the certification. As a result, a final regulatory flexibility analysis is not required and one was not prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 30, 2015

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

2. In § 660.702, revise the definition for “Prohibited species” to read as follows:

§ 660.702 Definitions.

* * * * *

Prohibited species means any highly migratory species for which quotas or catch limits under the FMP have been achieved and the fishery closed; salmon; great white shark; basking shark; megamouth shark; and Pacific halibut.

* * * * *

3. In § 660.705, revise paragraph (e) to read as follows:

§ 660.705 Prohibitions.

* * * * *

(e) When fishing for HMS, fail to return a prohibited species to the sea immediately with a minimum of injury, except under the following circumstances:

(1) Any prohibited species may be retained for examination by an authorized observer or to return tagged fish as specified by the tagging agency.

(2) Salmon may be retained if harvested in accordance with subpart H of this part, and other applicable law.

(3) Great white sharks, basking sharks, and megamouth sharks may be retained if incidentally caught and subsequently sold or donated to a recognized scientific or educational organization for research or display purposes.

(4) Pacific halibut may be retained if harvested in accordance with part 300, subpart E of this Title, and other applicable law.

* * * * *

§ 660.711 [Amended]

4. In § 660.711, remove paragraph (a) and redesignate paragraphs (b) through (d) as (a) through (c).

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